



CALIFORNIA STATE PERSONNEL BOARD

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ARNOLD SCHWARZENEGGER, Governor



CALIFORNIA STATE PERSONNEL BOARD MEETING

801 Capitol Mall
Sacramento, California

Public Session Location –

**The Courtyard San Diego Old Town Hotel
2435 Jefferson Street
Presidio Room
San Diego, CA 92110**

Teleconference – 320 West 4th Street
Los Angeles, California, Suite 620

Closed Session Location –

**The Courtyard San Diego Old Town Hotel
2435 Jefferson Street
Presidio Room
San Diego, CA 92110**

Teleconference – 320 West 4th Street
Los Angeles, California Suite 620

SUMMARY MINUTES – OCTOBER 31, 2006

SUMMARY MINUTES¹

OCTOBER 31, 2006

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

Sean Harrigan, Vice President
Maeley Tom, Member
Anne Sheehan, Member
Patricia Clarey, Member

2. REPORT OF THE EXECUTIVE OFFICER – Floyd D. Shimomura

The Executive Officer gave a brief overview of the topics to be discussed in the Board's Annual Planning Session which was to take place later in the meeting. The following human resource issues were to be discussed: 1) Recruitment, 2) Examination, 3) Hiring, 4) Workplace development, 5) Performance Management, 6) Retention, and 7) Workforce/Succession Planning.

3. REPORT OF THE CHIEF COUNSEL – Elise Rose

- SPB has been busy with revising regulations:
 - Proposed regulations on contracting out process based on cost savings is still in informal process. The early version has been shared with Department of General Services. The goal is to have a public hearing in January.
 - The Reasonable Accommodation and Discrimination regulations are under revision.
 - The DMV has asked SPB to assist them in converting their demonstration project into permanent regulations.
- Received request from Kathy Keeshan from CDCR to go over proposed legislation with Board.
- Sherry Evans and Bruce Monfross attended a meeting with Jackie Speier pertaining to Whistleblowing.

¹ The Minutes for the Board Meetings can be obtained at the following internet address:
<http://www.spb.ca.gov/calendar.htm>

- Carl Engemann of the Office of Administration Hearings is stepping down.
- Chris Waddell, Chief Counsel at CalSTRS, is leaving to take a job with the City of San Diego.

4. NEW BUSINESS

NONE PRESENTED

5. REPORT ON LEGISLATION – Sherry Evans

NONE PRESENTED

6. ORAL ARGUMENT

In the matter of **CASE NO. 05-3030A**. Appeal from constructive demotion. Office Technician (Typing). Department of Developmental Services.

Persons Participating:

Terry Slover, Labor Relations Specialist, Department of Developmental Services, representing department.

William Sweeney, Senior Labor Relations Representatives, SEIU Local 1000, representing appellant.

7. ORAL ARGUMENT

In the matter of **CASE NO. 05-1875A**. Appeal from rejection during probationary period. Equipment Materials Specialist. Department of Transportation.

Persons Participating:

Sol R. Allen, Business Representative, International Union of Operating Engineers (IUOE), representing appellant.

Judi Smith, Senior Legal Analyst, representing department.

CLOSED SESSION OF THE STATE PERSONNEL BOARD

8. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS, AND OTHER APPEALS

Deliberations to consider matter submitted at prior hearing.
[Government Code Sections 11126(d), 18653.]

9. DELIBERATION ON ADVERSE ACTIONS, DISCRIMINATION COMPLAINTS, AND OTHER PROPOSED DECISIONS SUBMITTED BY ADMINISTRATIVE LAW JUDGES

Deliberations on matters submitted at prior hearing; on proposed, rejected, remanded, and submitted decisions; petitions for rehearing; and other matters related to cases heard by administrative law judges of the State Personnel Board or by the Board itself. [Government Code Sections 11126 (d), and 18653 (2).]
(See Action Taken on Pages 10–18)

10. PENDING LITIGATION

Conference with legal counsel to confer with and receive advice regarding pending litigation when discussion in open session would be prejudicial.
[Government Code sections 11126(e)(1) and 18653.]

International Union of Operating Engineers v. State Personnel Board,
Public Employment Relations Board (PERB) Case No. SA-CE-1295-S.

Patrick McCollum v. State of California
United States District Court, Northern District of California
Case No. C 04-03339 CRB

11. RECOMMENDATIONS TO THE LEGISLATURE

Deliberations on recommendations to the legislature.
[Government Code section 18653.]

NO ACTION

12. RECOMMENDATIONS TO THE GOVERNOR

Deliberations on recommendations to the Governor.
[Government Code section 18653.]

NO ACTION

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

13. DISCUSSION OF UPCOMING BOARD MEETING SCHEDULE OF NOVEMBER 14, 2006, IN SACRAMENTO, CALIFORNIA

NONE

BOARD ACTIONS:

14. ADOPTION OF THE STATE PERSONNEL BOARD SUMMARY MINUTES OF SEPTEMBER 20, 2006

ACTION: ADOPTED

VOTE: Harrigan, Tom, Sheehan, Clarey – Aye

15. EVIDENTIARY CASES

ACTION: See Case Listings on Pages 10–20

16. RESOLUTION EXTENDING TIME UNDER GOVERNMENT CODE SECTION 18671.1 EXTENSION - (See Minutes on Pages 30–31)

ACTION: ADOPTED

VOTE: Harrigan, Tom, Sheehan, Clarey – Aye

17. NON-EVIDENTIARY CASES

ACTION: See Case Listings on Pages 20–26

18. NON-HEARING CALENDAR

The following proposals were made to the State Personnel Board by either the Board staff or Department of Personnel Administration staff.

On October 31, 2006, the following proposals were presented to the Board by Karen Coffee, Chief, Merit Employment and Technical Resources Division, California State Personnel Board.

ACTION: ADOPTED

VOTE: Harrigan, Tom, Sheehan, Clarey – Aye

A. BOARD ITEMS PRESENTED BY STATE PERSONNEL BOARD OR DEPARTMENT OF PERSONNEL ADMINISTRATION TO ESTABLISH, REVISE OR ABOLISH CLASSIFICATIONS, ALTERNATE RANGE CRITERIA, ETC.

**COOK SPECIALIST I (CORRECTIONAL FACILITY)
COOK SPECIALIST II (CORRECTIONAL FACILITY)
CORRECTIONAL SUPERVISING COOK (CORRECTIONAL FACILITY)**

The California Department of Corrections and Rehabilitation (CDCR) proposes revisions to the Minimum Qualifications (MQ) for the cook Specialist I (Correctional Facility), Cook Specialist II (Correctional Facility), and Correctional Supervising Cook (Correctional Facility) classes to expand the type of work experience listed in the MQs in order to broaden the candidate pool, and to update language in the class specifications.

**This item was incorrectly listed under Staff Calendar Items in the agenda.*

B. ABOLISHMENT OF CLASSES THAT HAVE HAD NO INCUMBENTS FOR MORE THAN TWO YEARS. DEPARTMENTS THAT UTILIZE THE CLASS AS WELL AS THE APPROPRIATE UNION HAVE NO OBJECTION TO THE ABOLISHMENT OF THESE CLASSES.

THE DEPARTMENT OF PERSONNEL ADMINISTRATION AND STATE PERSONNEL BOARD propose to abolish the following unused classifications, which have been vacant for more than twenty-four months. Departments that utilize the class as well as the appropriate union have no objection to the abolishment of these classes. When classes are proposed to be abolished which are part of a class series, and other classes within the series will continue to be used, the class specification is included in the board item.

NONE

19. STAFF CALENDAR ITEMS FOR BOARD INFORMATION

OVERSIGHT COUNSEL, BUREAU OF INDEPENDENT REVIEW

**INCORRECTLY LISTED, MOVED TO NON-HEARING CALENDAR, SECTION A, TO BE HEARD AT AN UPCOMING BOARD MEETING.*

CHIEF DEPUTY COUNSEL, CALIFORNIA LAW REVISION COMMISSION

**INCORRECTLY LISTED, MOVED TO NON-HEARING CALENDAR, SECTION A, TO BE HEARD ON THE NOVEMBER 14, 2006 BOARD MEETING.*

20. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

This section of the Minutes serves to inform interested individuals and departments of proposed and approved CEA position actions.

A. REQUESTS TO ESTABLISH NEW OR REVISE EXISTING CEA POSITIONS CURRENTLY UNDER CONSIDERATION

CHIEF, EXTERNAL AFFAIRS

The Office of Emergency Services proposes to allocate the above position to the CEA category. The Chief, External Affairs serves as the principal policy advisor and technical expert on public information and legislative issues.

CHIEF, TECHNOLOGY BRANCH

The Office of Emergency Services proposes to allocate the above position to the CEA category. The Chief, Technology Branch is responsible for developing, reviewing and recommending information technology/telecommunications interoperability related policies and procedures.

SECURE TREATMENT PROGRAM CLINICAL DIRECTOR, PORTERVILLE DEVELOPMENTAL CENTER

The Department of Developmental Services proposes to allocate the above position to the CEA category. The Secure Treatment Program Clinical Director for the Porterville Developmental Center has twenty-four hour overall responsibility for the management and oversight of the consumers and staff within the Secure Treatment Program residential and off-residential training and educational programs.

DEPUTY DIRECTOR, ENFORCEMENT

The Department of Toxic Substances Control proposes to reallocate their existing CEA position titled Division Chief, Statewide Compliance Division to the above position. The Deputy Director, Enforcement is responsible for managing, planning, organizing and directing the activities of approximately 160 enforcement staff, as well as planning and coordinating significant and major department-wide enforcement initiatives.

ASSISTANT EXECUTIVE DIRECTOR

The Sierra Nevada Conservancy proposes to allocate the above position to the CEA category. The Assistant Executive Director will provide direct assistance to the Executive Officer and the Governing Board in the development and implementation of programs designed to carry out the mission of the Sierra Nevada Conservancy.

DEPUTY DIRECTOR, HEALTH POLICY & LEGISLATIVE AND EXTERNAL AFFAIRS

The Managed Risk Medical Insurance Board (MRMIB) proposes to allocate the above position to the CEA category. The Deputy Director, Health Policy & Legislative and External Affairs is responsible for developing and implementing health policy for the Board, performing the development and policy negotiations for MRMIB's legislative function at both the State and federal level, and developing and implementing MRMIB's external affairs program.

DEPUTY EXECUTIVE DIRECTOR, EXTERNAL AFFAIRS AND SPECIAL ADVISOR

The Department of Fish and Game on behalf of the Fish and Game Commission proposes to allocate the above position to the CEA category. The Deputy Executive Director, External Affairs and Special Advisor serves as the principal consultant, advisor and technical expert on resource issues, activities, policies, and programs before the five-member Commission and the Executive Director.

DEPUTY EXECUTIVE DIRECTOR, REGULATIONS AND POLICY

The Department of Fish and Game on behalf of the Fish and Game Commission proposes to allocate the above position to the CEA category. The Deputy Executive Director, Regulations and Policy administers a statewide regulation program that involves all natural resources under the Commission's jurisdiction.

B. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO ESTABLISH NEW OR REVISE EXISTING CEA POSITIONS

ASSISTANT DEPUTY DIRECTOR, OFFICE OF PROVIDER OVERSIGHT

The Department of Managed Health Care's proposal to allocate the above position to the CEA category has been approved effective September 25, 2006.

POLICY ADVISOR AND STRATEGIC PLANNER

The Public Utilities Commission's proposal to allocate the above position to the CEA category has been approved effective September 25, 2006.

CHIEF COUNSEL

The Department of General Services' proposal on behalf of the California Children and Families Commission to allocate the above position to the CEA category has been approved effective September 26, 2006.

CHIEF, FOOD STAMP BRANCH

The Department of Social Service's proposal to allocate the above position to the CEA category has been approved effective October 2, 2006.

ASSISTANT COUNSEL, STATE CONTRACTS SERVICES

The State Compensation Insurance Fund's proposal to allocate the above position to the CEA category has been approved effective October 2, 2006.

ACTION: NOTED

21. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS, & OTHER APPEALS

Deliberations to consider matter submitted at prior hearing. [Government Code sections 11126(d), 18653.]

22. WRITTEN STAFF REPORT FOR BOARD INFORMATION

NONE

23. PRESENTATION OF EMERGENCY ITEMS AS NECESSARY

NONE

24. BOARD ACTIONS ON SUBMITTED ITEMS

ACTION: See Minutes on Pages 27–29

25. PLANNING SESSION – California State Personnel Board Staff

A D J O U R N M E N T

WHAT FOLLOWS IS A RECORD OF ACTION TAKEN ON AGENDA ITEMS 15 – 17 AS NOTED.

15. EVIDENTIARY CASES

The Board Administrative Law Judges conduct evidentiary hearings in appeals that include, but are not limited to, adverse actions, medical terminations, demotions, discrimination, reasonable accommodations, and whistleblower complaints.

A. BOARD CASES SUBMITTED

These items have been taken under submission by the State Personnel Board at a prior meeting.

On October 31, 2006, the Board took the following action on the cases listed as presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Harrigan, Tom, Sheehan, Clarey – Aye

(1) CASE NO. 05-1737RPA

Appeal from dismissal

Classification: Psychiatric Technician Assistant

Department: Department of Developmental Services

Petition for Rehearing granted March 8, 2006.

Oral argument heard July 11, 2006.

Case ready for decision by FULL Board.

NO ACTION

(2) CASE NO. 05-2596A & CASE NO. 05-2592A

Appeal from formal reprimand and formal reprimand and five workday's suspension

Classification: Physician and Surgeon, Correctional Facility

Department: Department of Corrections and Rehabilitation

Proposed decision rejected June 6, 2006.

Oral argument heard October 10, 2006.

Case ready for decision by FULL Board.

NO ACTION

October 31, 2006

- (3) **CASE NO. 05-1351A**
Appeal from dismissal
Classification: Youth Correctional Officer
Department: Department of the Youth Authority

Proposed decision rejected April 4, 2006.
Oral argument heard September 5, 2006.
Case ready for decision by FULL Board.

NO ACTION

- (4) **CASE NO. 04-1620PA**
Appeal from dismissal
Classification: Transportation Surveyor
Department: Department of Transportation

Petition for Rehearing granted April 4, 2006.
Oral argument heard August 8, 2006.
Case ready for decision by FULL Board.

ACTION: The Board issued a precedential decision that found that illegally obtained evidence could not be used against appellant during his administrative hearing. The case is remanded for hearing on the issue of whether appellant threatened his supervisor and, if so, what is the appropriate penalty.

- (5) **CASE NO. 05-0078A**
Appeal from dismissal
Classification: Workers' Compensation Payroll Auditor
Department: State Compensation Insurance Fund

Proposed decision rejected May 23, 2006.
Oral argument heard September 5, 2006.
Case ready for decision by FULL Board.

NO ACTION

- (6) **CASE NO. 05-0207PA**
Appeal from constructive medical suspension
Classification: Facility Captain
Department: Department of Corrections and Rehabilitation

Petition for Rehearing granted March 8, 2006.
Oral argument heard October 10, 2006.
Case ready for decision by FULL Board.

NO ACTION

October 31, 2006

(7) CASE NO. 06-0392

Appeal from five percent reduction in salary for twenty-four months

Classification: Correctional Officer

Department: Department of Corrections and Rehabilitation

Matter was held over for the October 31, 2006 Board meeting.

NO ACTION

(8) PSC NO. 06-03

Appeal from Executive Officer Decision Disapproving Personal Services Contract for Unarmed Security Guard Services

Department: Department of California Highway Patrol

Employee Organization: Services Employees International Union, Local 1000 (CSEA)

Oral argument heard October 10, 2006.

Case ready for decision by FULL Board.

NO ACTION

(9) CASE NO. 98-3128RB

Appeal for determination of back salary, benefits and interest

Classification: Deputy Attorney General IV

Department: Department of Justice

Proposed decision rejected July 13, 2005

Oral argument heard November 1, 2005 San Diego

Board issued decision February 7, 2006

ACTION: The Board issued a non-precedential decision pursuant to Government Code section 18710, that made several clarifications to its February 7, 2006 Decision regarding the amount of back pay and benefits owed to appellant.

B. CASES PENDING

ORAL ARGUMENTS

These cases were on calendar to be argued at this meeting or to be considered by the Board in closed session based on written arguments submitted by the parties.

On October 31, 2006, the Board took the following action on the cases listed as presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Harrigan, Tom, Sheehan, Clarey – Aye

October 31, 2006

- (1) **CASE NO. 05-3030A**
Appeal constructive demotion
Classification: Office Technician
Department: Department of Developmental Services
ACTION: SUBMITTED
- (2) **CASE NO. 05-1875A**
Appeal from rejection during probationary period
Classification: Equipment Material Specialist
Department: Department of Transportation
ACTION: SUBMITTED

C. CHIEF COUNSEL RESOLUTIONS

On October 31, 2006, the Board took the following action on the cases listed as presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Harrigan, Tom, Sheehan, Clarey – Aye

- (1) **CASE NO. 06-2429**
CASE NO. 06-2432
CASE NO. 06-2423
CASE NO. 06-2435
CASE NO. 06-2434
CASE NO. 06-2433
Backdating of Appointments
Classification: Staff Counsel III
Department: State Water Resources Control Board
Request to Approve Backdating of Appointments
ACTION: The Board issued a Resolution that authorizes the back-dating of appellants' appointment to the Staff Counsel III classification, retroactive to February 1, 2005.
- (2) **CASE NO. 05-1733**
Appeal from rejection during probation
Classification: Registered Nurse, CF
Department: Department of Corrections and Rehabilitation
Request for Back Pay Hearing
ACTION: The Board issued a Resolution that orders the parties to appear for a back pay hearing before a Board ALJ to determine the amount of back salary and benefits owed to appellant.

COURT REMANDS

This case has been remanded to the Board by the court for further Board action.

(3) CASE NO. 00-1687AB

Appeal from denial of reasonable accommodation

Classification: Correctional Lieutenant

Department: Department of Corrections and Rehabilitation

Remand Order from Riverside County Superior Court

ACTION: The Board issued a Resolution vacating its prior Decision and instructing the parties to submit written briefs to the Board.

STIPULATIONS

NONE

D. ADMINISTRATIVE LAW JUDGE'S (ALJ) PROPOSED DECISIONS

PROPOSED DECISIONS

These are ALJ proposed decisions submitted to the Board for the first time.

On October 31, 2006, the Board took the following action on the cases listed as presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Harrigan, Tom, Sheehan, Clarey – Aye

(1) CASE NO. 05-4113

Appeal from five percent reduction in salary for 12 months+

Classification: Registered Nurse

Department: Department of Corrections and Rehabilitation

ACTION: The Board adopted the ALJ's Proposed Decision sustaining the reduction in salary.

(2) CASE NO. 06-0722

Appeal from official reprimand

Classification: Correctional Officer

Department: Department of Corrections and Rehabilitation

ACTION: The Board adopted the ALJ's Proposed Decision sustaining the official reprimand.

- (3) **CASE NO. 05-4194E**
Appeal for discrimination complaint
Classification: Assistant Information Systems Analyst
Department: Department of Corrections and Rehabilitation
ACTION: The Board adopted the ALJ's Proposed Decision dismissing the complaint.
- (4) **CASE NO. 05-4145**
Appeal from five percent reduction in salary for 12 months
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
ACTION: The Board adopted the ALJ's Proposed Decision sustaining the reduction in salary.
- (5) **CASE NO. 04-1880**
Appeal from dismissal
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
ACTION: The Board adopted the ALJ's Proposed Decision sustaining the dismissal.
- (6) **CASE NO. 05-2030 & CASE NO. 05-2158**
Appeal from 55 workdays' suspension
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
ACTION: The Board adopted the ALJ's Proposed Decision sustaining the 55 workdays suspension for Case No. 05-2030 and revoking the 55 workdays suspension for Case No. 05-2158.
- (7) **CASE NO. 06-1884**
Appeal from rejection during probation
Classification: Custodian
Department: Department of General Services
ACTION: The Board adopted the ALJ's Proposed Decision affirming the rejection and denying the appeal.
- (8) **CASE NO. 06-1078**
Appeal from official reprimand
Classification: Correctional Sergeant
Department: Department of Corrections and Rehabilitation
ACTION: The Board adopted the ALJ's Proposed Decision sustaining the official reprimand.

- (9) **CASE NO. 06-1300**
Appeal from dismissal
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
ACTION: The Board adopted the ALJ's Proposed Decision dismissing the appeal as moot.
- (10) **CASE NO. 05-0946**
Appeal from dismissal
Classification: Physician
Department: California State University, San Bernardino
ACTION: The Board adopted the ALJ's Proposed Decision sustaining the dismissal with a special resolution.
- (11) **CASE NO. 05-2550**
Appeal from rejection during probation
Classification: Motor Vehicle Field Representative
Department: Department of Motor Vehicles
ACTION: The Board adopted the ALJ's Proposed Decision affirming the rejection and denying the appeal.
- (12) **CASE NO. 05-2139E**
Appeal from denial of request for reasonable accommodation
Classification: Office Technician (Typing)
Department: Employment Development Department
ACTION: The Board adopted the ALJ's Proposed Decision sustaining the denial for reasonable accommodation.
- (13) **CASE NO. 06-2298**
Appeal from ten percent reduction in salary for six months
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
ACTION: The Board adopted the ALJ's Proposed Decision sustaining the reduction in salary with a special resolution.
- (14) **CASE NO. 05-3870**
Appeal from three days' suspension
Classification: Youth Correctional Counselor
Department: Department of Corrections and Rehabilitation
ACTION: The Board adopted the ALJ's Proposed Decision sustaining the suspension.
- (15) **CASE NO. 05-2457**
Appeal from ten percent reduction in salary for 12 months
Classification: Parole Agent I
Department: Department of Corrections and Rehabilitation
ACTION: The Board adopted the ALJ's Proposed Decision revoking the reduction in salary.

October 31, 2006

- (16) **CASE NO. 06-0206**
Appeal from ten percent reduction in salary for 24 months
Classification: Medical Technical Assistant
Department: Department of Corrections and Rehabilitation
ACTION: The Board adopted the ALJ's Proposed Decision sustaining the reduction in salary.
- (17) **CASE NO. 06-0274**
Appeal from dismissal
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
ACTION: The Board adopted the ALJ's Proposed Decision sustaining the dismissal.
- (18) **CASE NO. 05-3519**
Appeal from demotion
Classification: Supervisor of Building and Trades
Department: Department of General Services
ACTION: The Board adopted the ALJ's Proposed Decision modifying the demotion to a temporary demotion for 12 months.
- (19) **CASE NO. 06-0029**
Appeal from official reprimand
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
ACTION: The Board adopted the ALJ's Proposed Decision revoking the official reprimand.
- (20) **CASE NO. 06-0392**
Appeal from five percent reduction in salary for 24 months
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
ACTION: The Board rejected the ALJ's Proposed Decision.

PROPOSED DECISIONS TAKEN UNDER SUBMISSION AT PRIOR MEETING

NONE

PROPOSED DECISIONS AFTER BOARD REMAND

NONE

PROPOSED DECISIONS AFTER SPB ARBITRATION

NONE

E. PETITIONS FOR REHEARING

ALJ PROPOSED DECISIONS ADOPTED BY THE BOARD

The Board voted to grant or deny a petition for rehearing filed by one or both parties, regarding a case already decided by the Board.

On October 31, 2006, the Board took the following action on the cases listed as presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Harrigan, Tom, Sheehan, Clarey – Aye

- (1) CASE NO.05-2115P, 05-2272P & 05-3110P**
Appeal from denial of reasonable accommodation, 5 working days' suspension And 20 working days' suspension
Classification: Program Technician II
Department: Employment Development Department
ACTION: Petition for rehearing denied.
- (2) CASE NO. 05-2888P**
Appeal from dismissal
Classification: Staff Services Analyst
Department: Department of Consumer Affairs
ACTION: Petition for rehearing granted.
- (3) CASE NO. 05-2373EP**
Appeal for complaint of retaliation
Classification: Deputy Labor Commissioner I
Department: Department of Industrial Relations
ACTION: Petition for rehearing denied.
- (4) CASE NO. 05-2760P**
Appeal from demotion
Classification: Staff Services Manager I
Department: Office of the State Controller
ACTION: Petition for rehearing denied.
- (5) CASE NO. 05-2713P**
Appeal from disciplinary transfer
Classification: Transportation Engineer (Civil)
Department: Department of Transportation
ACTION: Petition for rehearing denied.

WHISTLEBLOWER NOTICE OF FINDINGS

NONE

October 31, 2006

F. PENDING BOARD REVIEW

These cases were pending preparation of transcripts, briefs, or the setting of oral argument before the Board.

On October 31, 2006, the Board took the following action on the cases listed as presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Harrigan, Tom, Sheehan, Clarey – Aye

(1) CASE NO. 05-0053A

Appeal from dismissal

Classification: Park Maintenance Assistant

Department: Department of Parks and Recreation

Proposed decision rejected October 10, 2006.

Pending transcript.

NO ACTION

(2) CASE NO. 05-2211A

Appeal from dismissal

Classification: Senior Tax Compliance Representative

Department: Employment Development Department

Proposed decision rejected September 20, 2006.

Pending transcript.

NO ACTION

(3) CASE NO. 05-3030A

Appeal from constructive demotion

Classification: Office Technician

Department: Department of Developmental Services

Proposed decision rejected May 2, 2006.

Oral argument heard October 31, 2006, San Diego.

ACTION: SUBMITTED

(4) CASE NO. 05-0638A

Appeal from dismissal

Classification: Conservationist I

Department: California Conservation Corps

Proposed decision rejected September 5, 2006.

Transcript prepared.

NO ACTION

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- (5) **CASE NO. 04-1789APB**
Appeal for back pay
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation

Proposed decision rejected June 21, 2006.

Oral argument cancelled.

Pending stipulation approval.

NO ACTION

- (6) **CASE NO. 05-1567A**
Appeal from dismissal
Classification: Housing Finance Specialist (General)
Department: California Housing Finance Agency

Proposed decision rejected July 11, 2006.

Oral argument originally set October 31, 2006, San Diego.

Oral argument continued to December 5-6, San Francisco.

NO ACTION

- (7) **CASE NO. 05-1875A**
Appeal from rejection during probationary period
Classification: Equipment Material Specialist
Department: Department of Transportation

Proposed decision rejected August 8, 2006.

Oral argument heard October 31, 2006, San Diego.

ACTION: SUBMITTED

- (8) **CASE NO. 04-2919EPA**
Appeal of discrimination and retaliation
Classification: Physician and Surgeon
Department: Department of Corrections and Rehabilitation

Petition for rehearing granted September 20, 2006.

Transcript prepared.

NO ACTION

17. NON-EVIDENTIARY CASES

A. WITHHOLD APPEALS

Cases were heard by a Staff Hearing Officer, a managerial staff member of the State Personnel Board or investigated by Appeals Division staff. The Board was presented recommendations by a Staff Hearing Officer or Appeals Division staff for final decision on each appeal.

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WITHHOLD FROM CERTIFICATION
CASES HEARD BY A STAFF HEARING OFFICER

NONE

WITHHOLD FROM CERTIFICATION
CASES NOT HEARD BY A STAFF HEARING OFFICER

On October 31, 2006, the Board adopted, as indicated below, the following items as presented by Laura M. Aguilera, Assistant Executive Officer, State Personnel Board.

VOTE: Harrigan, Tom, Sheehan, Clarey – Aye

- (1) CASE NO. 05-3632**
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
Issue: Suitability; a negative employment record and omitting pertinent information.
ACTION: DENIED
- (2) CASE NO. 05-3629**
Classification: Medical Technical Assistant
Department: Department of Corrections and Rehabilitation
Issue: Suitability; omitted information and a negative military record.
ACTION: DENIED
- (3) CASE NO. 05-3641**
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
Issue: Suitability; felony conviction.
ACTION: DENIED
- (4) CASE NO. 05-3356**
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
Issue: Suitability; omitted pertinent information.
ACTION: DENIED
- (5) CASE NO. 05-3630**
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
Issue: Suitability; a negative employment record.
ACTION: DENIED

- (6) **CASE NO. 05-2885**
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
Issue: Suitability; omitted pertinent information, furnished inaccurate information and negative law enforcement contacts.
ACTION: DENIED
- (7) **CASE NO. 05-3650**
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
Issue: Suitability; his current probationary status.
ACTION: DENIED
- (8) **CASE NO. 05-3628**
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
Issue: Suitability; omitted information and furnished inaccurate information.
ACTION: DENIED
- (9) **CASE NO. 05-3625**
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
Issue: Suitability; omitted pertinent information.
ACTION: DENIED
- (10) **CASE NO. 05-3639**
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
Issue: Suitability; a negative employment record.
ACTION: DENIED
- (11) **CASE NO. 05-3248**
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
Issue: Suitability; omitted information and furnished inaccurate information.
ACTION: DENIED
- (12) **CASE NO. 05-3240**
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
Issue: Suitability; omitted pertinent information.
ACTION: DENIED

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(13) CASE NO. 05-3238

Classification: Correctional Officer

Department: Department of Corrections and Rehabilitation

Issue: Suitability; furnished inaccurate information.

ACTION: DENIED

(14) CASE NO. 05-3241

Classification: Correctional Officer

Department: Department of Corrections and Rehabilitation

Issue: Suitability; omitted pertinent information and furnished inaccurate information during the selection process.

ACTION: DENIED

B. MEDICAL AND PSYCHOLOGICAL SCREENING APPEALS

Cases were heard by a Staff Hearing Panel comprised of a managerial staff member of the State Personnel Board and a medical professional. The Board was presented recommendations by a Hearing Panel on each appeal.

On October 31, 2006, the Board adopted, as indicated below, the following items as presented by Laura M. Aguilera, Assistant Executive Officer, State Personnel Board.

VOTE: Harrigan, Tom, Sheehan, Clarey – Aye

(1) CASE NO. 05-2118

Classification: Hospital Peace Officer

Department: Department of Mental Health

Issue: The appellant shows signs of poor judgment and immaturity, and personality traits that would significantly interfere with the performance standards for State peace officer employment under Government Code § 1031.

ACTION: DENIED

(2) CASE NO. 05-1919

Classification: Correctional Officer

Department: California Department of Correction & Rehabilitation

Issue: The appellant was medically disqualified because his visual acuity was not correctable to the visual acuity standard of 20/20 that would qualify him to safely perform the essential functions of a Correctional Officer.

ACTION: DENIED

• CASE NO. 06-2210N

Classification: Correctional Officer

Department: Department of Corrections and Rehabilitation

ACTION: DISMISSED

C. **EXAMINATION APPEALS**
MINIMUM QUALIFICATIONS
MERIT ISSUE COMPLAINTS

NONE

D. **RULE 211 APPEALS**
RULE 212 OUT OF CLASS APPEALS
VOIDED APPOINTMENT APPEALS

Cases were heard by a Staff Hearing Officer, or a managerial staff member of the State Personnel Board. The Board was presented recommendations by a Staff Hearing Officer for final decision on each appeal.

- **CASE NO. 06-1102N**
Classification: Disaster Assistances Programs Specialist I
Department: Office of Emergency Services
ACTION: DISMISSED

E. **REQUEST TO FILE CHARGES CASES**

Investigated by Appeals Division staff. The Board was presented recommendations by Appeals Division staff for final decision on each request.

On October 31, 2006, the Board adopted, as indicated below, the following items as presented by Laura M. Aguilera, Assistant Executive Officer, State Personnel Board.

VOTE: Harrigan, Tom, Sheehan, Clarey – Aye

- (1) **CASE NO. 05-1573**
Classification: Civilly Committed Patient at Atascadero State Hospital
Department: Department of Mental Health
Issue: The charging party requests to file charges against an employee of the Atascadero State Hospital.
ACTION: DENIED
- (2) **CASE NO. 05-3834**
Classification: Civilly Committed Patient at Atascadero State Hospital
Department: Department of Mental Health
Issue: The charging party requests to file charges against an employee of the Atascadero State Hospital.
ACTION: DENIED

October 31, 2006

- (3) **CASE NO. 05-3838**
Classification: Civilly Committed Patient at Atascadero State Hospital
Department: Department of Mental Health
Issue: The charging party requests to file charges against an employee of the Atascadero State Hospital.
ACTION: DENIED
- (4) **CASE NO. 05-4380**
Classification: Civilly Committed Patient at Atascadero State Hospital
Department: Department of Mental Health
Issue: The charging party requests to file charges against an employee of the Atascadero State Hospital.
ACTION: DENIED
- (5) **CASE NO. 05-4369**
Classification: Civilly Committed Patient at Atascadero State Hospital
Department: Department of Mental Health
Issue: The charging party requests to file charges against an employee of the Atascadero State Hospital.
ACTION: DENIED
- (6) **CASE NO. 05-3800**
Classification: Civilly Committed Patient at Atascadero State Hospital
Department: Department of Mental Health
Issue: The charging party requests to file charges against an employee of the Atascadero State Hospital.
ACTION: DENIED
- (7) **CASE NO. 05-3822**
Classification: Civilly Committed Patient at Atascadero State Hospital
Department: Department of Mental Health
Issue: The charging party requests to file charges against an employee of the Atascadero State Hospital.
ACTION: DENIED
- (8) **CASE NO. 05-1614**
Classification: Civilly Committed Patient at Atascadero State Hospital
Department: Department of Mental Health
Issue: The charging party requests to file charges against an employee of the Atascadero State Hospital.
ACTION: DENIED

- (9) **CASE NO. 05-1505**
Classification: Civilly Committed Patient at Atascadero State Hospital
Department: Department of Mental Health
Issue: The charging party requests to file charges against an employee of the Atascadero State Hospital.
ACTION: DENIED
- (10) **CASE NO. 05-2070**
Classification: Civilly Committed Patient at Atascadero State Hospital
Department: Department of Mental Health
Issue: The charging party requests to file charges against an employee of the Atascadero State Hospital.
ACTION: DENIED
- (11) **CASE NO. 05-1694**
Classification: Civilly Committed Patient at Atascadero State Hospital
Department: Department of Mental Health
Issue: The charging party requests to file charges against an employee of the Atascadero State Hospital.
ACTION: DENIED
- (12) **CASE NO. 05-3805**
Classification: Civilly Committed Patient at Atascadero State Hospital
Department: Department of Mental Health
Issue: The charging party requests to file charges against an employee of the Atascadero State Hospital.
ACTION: DENIED

PETITIONS FOR REHEARING CASES

NONE

SUBMITTED

1. TEACHER STATE HOSPITAL (SEVERELY), ETC.

Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002.)

NO ACTION

2. VOCATIONAL INSTRUCTOR (SAFETY)(VARIOUS SPECIALTIES)

Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002.)

NO ACTION

3. TELEVISION SPECIALIST (SAFETY)

The Department of Corrections proposes to establish the new classification Television Specialist (Safety) by using the existing Television Specialist class specification and adding "Safety" as a parenthetical to recognize the public aspect of their job, additional language will be added to the Typical Tasks section of the class specification and a Special Physical Characteristics section will be added. (Presented to Board March 4, 2003.)

NO ACTION

4. HEARING – Personal Services Contract #04-03

Appeal of the California State Employees Association from the Executive Officer's April 15, 2004, Approval of Master Contracts between the California Department of Corrections and Staffing Solutions, CliniStaff, Inc., Staff USA, Inc., CareerStaff Unlimited, MSI International, Inc., Access Medical Staffing & Service, Drug Consultants, Infinity Quality Services Corporation, Licensed Medical Staffing, Inc., Morgan Management Services, Inc., Asereth Medical Services, and PrideStaff dba Rx Relief. (Hearing held August 12, 2004.)

NO ACTION

5. HEARING

Proposed new and revised State Personnel Board Regulations effecting equal opportunity, discrimination complaints and reasonable accommodation policies and procedures. (Hearing held July 7, 2004.)

NO ACTION

6. HEARING – Public Hearing Regarding State Employment Application (STD. 678 (Rev/ 12/2001))

Should the Instructions section of the state employment application, pursuant to Richard Toby (2001) SPB Dec. No. 01-04, clarify whether employees who have been rejected during their probationary period be required to answer "Yes" to Question No. 5 of the employment application? (Hearing held July 11, 2006.)

ACTION: ADOPTED ON 10/10/06 BOARD MEETING

7. CASE NO. 05-1737RPA

Appeal from dismissal. Psychiatric Technician Assistant. Department of Developmental Services. (Oral argument held July 11, 2006.)

NO ACTION

8. CASE NO. 04-1620PA

Appeal from dismissal. Transportation Surveyor. Department of Transportation. (Oral argument held August 8, 2006.)

ACTION: The Board issued a precedential decision that found that illegally obtained evidence could not be used against appellant during his administrative hearing. The case is remanded for hearing on the issue of whether appellant threatened his supervisor and, if so, what is the appropriate penalty.

9. CASE NO. 00-3446

Appeal to set aside resignation. Police Officer. California State University, Fresno. (Oral argument held September 5, 2006.)

NO ACTION

10. CASE NO. 05-1351A

Appeal from dismissal. Youth Correctional Officer. Department of Corrections and Rehabilitation. (Oral argument held September 5, 2006.)

NO ACTION

11. CASE NO. 05-0078A

Appeal from dismissal. Workers' Compensation Payroll Auditor. State Compensation Insurance Fund. (Oral argument held September 5, 2006.)

NO ACTION

12. CASE NO. 05-2596A & CASE NO. 05-2595A & 06-0016A

Appeal from official reprimand and official reprimand and five workdays' suspension. Physician and Surgeon, Correctional Facility. Department of Corrections and Rehabilitation. (Oral argument held October 10, 2006.)

NO ACTION

13. CASE NO. 05-4330A

Appeal from dismissal. Custodian Supervisor II. Department of Corrections and Rehabilitation. (Oral argument held October 10, 2006.)

NO ACTION

14. CASE NO. 05-0207PA

Appeal from constructive medical suspension. Facility Captain. Department of Corrections and Rehabilitation. (Oral argument held October 10, 2006.)

NO ACTION

15. PERSONAL SERVICES CONTRACT #06-03

Appeal from the Executive Officer Decision Disapproving Personal Services Contract for Unarmed Security Guard Services. California Highway Patrol. Service Employees International Union, Local 1000 (CSEA). (Oral argument held October 10, 2006.)

NO ACTION

16. CASE NO. 05-3030A

Appeal constructive demotion. Office Technician. Department of Developmental Services. (Oral argument held October 31, 2006.)

NO ACTION

17. CASE NO. 05-1875A

Appeal from rejection during probationary period. Equipment Material Specialist. Department of Transportation. (Oral argument held October 31, 2006.)

NO ACTION

NOTICE OF GOVERNMENT CODE SECTION 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional 45 days, the Board hereby publishes its substantial reasons for the need for the 45-day extension for some of the cases now pending before it for decision.

An additional 45 days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than six months as of the date of the Board meeting.

GOVERNMENT CODE SECTION 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code section 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

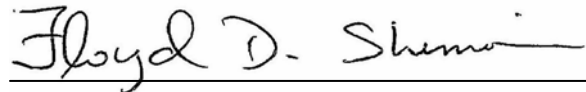
WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

* * * * *

I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting held on October 31, 2006.

VOTE: Harrigan, Tom, Sheehan, Clarey – Aye

A handwritten signature in black ink, reading "Floyd D. Shimomura", written over a horizontal line.

Floyd Shimomura
Executive Officer
California State Personnel Board